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## CANADIAN PROVINCES AND FOREIGN RELATIONS

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CANADIAN PROVINCES AND FOREIGN RELATIONS

INTRODUCTION

(...) The reason Saskatchewan has become involved in foreign affairs, and the reason that most provinces do, is simply this - I was elected to make my province a growing, dynamic place with exciting career opportunities for its citizens. To do that I have to see that we sell more of our products in the international market-place, and that we develop every opportunity available to us. This is not a job that I am going to leave to a federal bureaucrat nearly 2,000 miles away. The federal government cannot know in detail the needs and strengths of Saskatchewan, and there is no guarantee that our priorities and the federal government's priorities will exactly coincide.(1)

The federal State of Canada acquired full international sovereignty in the early thirties. Thirty years later, in a world full of international actors such as international organizations, multinationals and new Third World countries, controversy developed between Quebec and Canada about provincial international activities and their effect on the country's foreign policy. Since then, other provinces have joined the debate and called on the federal government to take their interests into consideration.(2)

In the past, the term "foreign policy" meant primarily questions of security, war, and peace; it did not involve the provinces directly. Today, however, especially in the rapidly changing international

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(1) *Harvard Speech*, 13 March 1984 by Saskatchewan Premier Grant Devine at the 1983-84 Harvard University Seminar on Canada-U.S. relations.

(2) "Les premiers ministres de l'Ouest demandent à Ottawa de libéraliser le commerce extérieur international," *La Presse*, 9 May 1984.

system, a country's foreign policy involves much more than this. It covers national and collective security, trade, foreign investment, living conditions, the environment, energy, etc. There has been a diversification of objectives and the geographical framework for policy-determining factors has broadened from national to bilateral, regional and worldwide. Local, national and international public policies interpenetrate one another, reflecting structural changes such as the internationalization of various fields of activity and technological change, as well as economic conditions, especially in crisis periods; such changes are considered at international forums and sometimes are covered by international agreements.

In 1990, public economic policies are a priority and a planned part of the everyday life of individuals and the State, whether in the public or private sectors (e.g. exports account for about 30% of Canada's gross national product). The provinces are directly involved, having become, like multinationals, official or unofficial international actors in economic relations. This comment applies primarily to the most powerful of the provinces and in the framework of their relations with the United States. The purpose of the "third option" policy stated by Mitchell Sharp in 1972 was to break down this overly asymmetrical relationship with the United States. Closer ties with Europe, among other measures, were to help counter it. In fact what took place was increased trade, especially between the Western provinces and Pacific countries, notably Japan. Economic relations with the United States nevertheless remain the core of the external relations of all provinces.

Provincial external relations take place at two levels: the transnational and the official. The former does not give rise to any major problems; the list of contacts between Canadian provinces and American states is a long one, and it fits unproblematically into geographical, political and economic conditions. Official relations between provinces and foreign countries, on the other hand, are a source of conflict when they are direct. When such conflicts arise, the parties involved state their positions and discuss the sharing of responsibilities in Canada's external relations. Are the provinces international actors?



First, we must outline the political and legal context for provincial external policy. This involves the constitutional framework, especially the division of jurisdictions between the federal government and the provinces. We must then examine each of the three parts of the framework within which the external activities of the provinces are conducted, i.e. international or transnational provincial commitments, representation abroad and participation in world forums and international conferences and organizations.

#### THE NATIONAL POLITICAL AND LEGAL ENVIRONMENT

Let us begin by pointing out that the potential for conflict between the different levels of government is accentuated by geopolitical circumstances. Canada is an immense and sparsely populated country. The population lives primarily in a narrow strip of territory along the United States border, creating a natural and historical North-South (or South-North) flow of economic, technological and cultural forces that goes against the East-West relations needed for Canada's unity and even its identity. Although a post-industrial society entering the computer era, Canada has a wealth of unexploited natural resources still being developed. It is a federal state with a tendency towards decentralization. The Trudeau government temporarily stemmed this movement; those in power, aided by institutions and various mechanisms, put the brakes on the natural trend away from unity (The *Constitution Act, 1867*) to the proliferation of decision centres at a time when government intervention (Statism), accompanied by nationalism (Canadianization), was intensifying.

The opportunities for conflict are aggravated by the ambiguity of the legal framework for foreign policy, which may be approached at two levels: the conduct of foreign policy and its internal management or implementation. Until the '60s, the first was not really a problem. The second, however, raised questions about the distribution of powers between federal and provincial authorities under the 1867 Constitution, which had become obsolete in terms of changes in the international system. Federal-provincial agreement became necessary; if this failed,



judicial arbitration was called for, sometimes as a prelude to a political arrangement.

#### A. The Conduct of Foreign Policy

Canada's *Constitution Act, 1867* does not consider the distribution of powers in international matters, except for section 132 which, out of its historical context, is no longer applicable. In fact it provides only for the internal implementation of obligations arising from the signing of the Empire Treaties which was at the time the sole responsibility of the Imperial Crown, i.e. the British Executive. Section 9 of the 1867 Act vests Executive Authority in the Monarch. Canada has since obtained international sovereignty; to be specific, between 1919 and 1931 -- between the Treaty of Versailles and the Statute of Westminster.<sup>(3)</sup>

The conduct of Canada's international relations is legally and in the British tradition exercisable only by a Prerogative of the Crown.<sup>(4)</sup> International acts include declarations of war and neutrality, peace treaties, establishing or breaking off diplomatic relations and making international claims. It is also necessary to distinguish the power of prerogative from its exercise. Although in 1867 the Queen held and exercised powers with the advice of her British ministers, Canadian ministers took over this function when Canada acquired international sovereignty. From 1947, under new Letters Patent, the Governor General of Canada was authorized to exercise these powers on the advice of the Privy Council for Canada. This delegation of authority was further specified and

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(3) The Supreme Court of Canada's decision in the 1967 *Reference: re Offshore Mineral Rights of British Columbia*, (1967) S.C.R. 792, and the judgment of 28 September 1981 on the patriation of the Constitution; see also *Labour Conventions*, Duff C.J. (1936) S.C.R. 461, and before the Privy Council Judicial Committee, Lord Atkin, (1937) A.C. 326.

(4) "...prerogative of the Crown ... (is) a right that remains in the Sovereign as one of that bundle of discretionary common law rights which were ... exercisable by the Sovereign in person", W.F. O'Connor, *Report to the Hon. Speaker of the Senate of Canada on the BNA Act, 1867*, Ottawa, 1939, p. 145-6.



broadened in December 1977 to include all functions as Canadian Head of State fulfilled by the Sovereign.<sup>(5)</sup>

But there is a basic question here: is there a division of power of prerogative between the Crown in right of Canada and the Crown in right of the provinces, and a division of the exercise of this power between the federal and provincial levels of government corresponding to the distribution of legislation jurisdictions provided for in the Constitution? Over the past 20 years the federal government's answer has been negative: foreign policy is the sole prerogative of the federal authorities; it cannot be fragmented. Canada is the sole actor in the world system. Only Canada has an international personality.

A 1968 federal government white paper, *Federalism and International Relations*,<sup>(6)</sup> established the authority of the federal government in the conduct of Canada's foreign policy, especially its exclusive jurisdiction over the treaty-making power, participation in international organisations and exchange of diplomats. It is based on Canadian constitutional law and international law. The former is primarily the judicial interpretation at the highest level of passages on the distribution of powers and jurisdictions among the three powers -- executive, legislative, and judicial -- within a given level of government and between the two levels of government -- federal and provincial.<sup>(7)</sup> International law involves practice, doctrine and agreements.

This position was disputed in the mid-'60s by the Liberal government in Quebec, and then by the Union Nationale and, in a different context, the Parti Québécois. The dispute took place during the "Quiet Revolution", with its "national" claims for Quebec and its affirmation of a

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(5) News Release, Office of the Prime Minister of Canada, 10 December 1977.

(6) *Federalism and International Relations*, 1968; see also *Federalism and International Conferences on Education*, 1968.

(7) cf. *Re Labour Conventions*, (1936) S.C.R. 461, p. 510 Rinfret J.; p. 488, Duff C.J.; *Francis v. the Queen*, (1956) S.C.R. 618, p. 625, Rand J.; *Offshore Mineral Rights of British Columbia*, (1967) S.C.R. 792, T.N. S.C.R. 1984.

distinctive cultural, political and economic status in its own territory and its jurisdictions and interests abroad.

The Government of Quebec, in a 1968 position paper,<sup>(8)</sup> also based its legal position on both external and internal arguments, giving an interpretation that differed from the texts, the body of judicial decisions and international practice.<sup>(9)</sup>

Other currently or potentially wealthier provinces, whether industrialized or major producers of natural resources, agreed in part with Quebec but used a different approach. Rather than attack from the legal point of view, they based themselves on the de facto situation. They generally do not dispute the federal government's right and supremacy in matters of Canada's formal or official foreign policy. As Saskatchewan's Deputy Minister of Intergovernmental Affairs stated in 1981, "No one (...) seriously challenges the primary role of the federal government in developing Canada's foreign policy,"<sup>(10)</sup> a point which had already been underlined in the 1978 Alberta position paper as follows:

It is generally accepted that the development of foreign policy and the conduct of international relations is the responsibility of the federal government.<sup>(11)</sup>

The provinces have nevertheless asked to be involved in the decision-making process, i.e. in the development and application of Canada's foreign policy on matters within their legislative jurisdiction or -- of key importance -- affecting their priority interests. These interests are economic, in the broad sense of the term. Government intervention in the economy, whether direct, through the public sector, or

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(8) *Document de travail sur les relations avec l'étranger*, Notes prepared by the Quebec delegation to the Constitutional Conference, Quebec, 5 February 1969.

(9) See *Liquidators of the Maritime Bank*, (1892) A.C. 437; *Bonanza Creek Gold Mining Co.*, (1916) A.C. 566; *Labour Conventions*, (1937) A.C. 326.

(10) Howard Leeson, speech to the members of the CIIA/ICAI, Saskatoon, 19 May 1981.

(11) *Harmony in Diversity: A New Federalism for Canada*, Alberta Government position paper on Constitutional Change, October 1978.



indirect, by means of an exponential growth in regulatory activity which is sometimes not even rational, is becoming a fact of life; the economy has an important international dimension.

The international activities of provinces naturally include export development policy (electricity, hydrocarbons, raw materials, manufactured goods), foreign investment, international loans, aid or development, and cultural, scientific and technological exchanges. The range is a broad one. The question of the "right" to provincial representation abroad and the capacity to sign international treaties has been raised by Quebec. In 1978 Alberta asked that the Constitution include a clause confirming the legitimate role of the provinces in certain areas of international relations.

Provincial government input into the formulation of external policy is not negligible either at the national decision-making level or in the definition of public policy. The action of public decision-makers is the determining factor in establishing policy.

## B. Structures

Faced with these problems, the provinces organized themselves, establishing new machinery and a new bureaucracy for international and internal intergovernmental coordination. This involved the establishment of departments of intergovernmental affairs including a branch for dealing with international matters or the setting up of international branches within other ministries. The dual purpose of these new organizations was to liaise with the Department of External Affairs and to coordinate the provinces' international activities. In general, while these departments have retained their policy role, the day-to-day work of provincial missions abroad has come to be dominated by provincial departments of industry and trade.

Ontario, which had a long history of external activities (e.g., sending delegates on missions even before Confederation) established a Department of Treasury, Economics and Intergovernmental Affairs in 1972 to deal with matters of internal and external coordination. In 1978 it established the Department of Intergovernmental Affairs, with a branch responsible for international affairs (particularly economic exchanges with

the United States). In recent years the Ministry of Industry, Trade and Technology has played a greater role in international economic contacts.

In Alberta, a Department of Federal and Intergovernmental Affairs was established in 1972, with an international division as of 1978 to deal specifically with trade and energy matters as well as foreign policy analysis. While this department still coordinates Alberta's policies toward other governments (both Canadian and foreign), the Department of Economic Development and Trade also plays a role in staffing missions abroad.

In British Columbia, a Ministry of Intergovernmental Relations was established with an international group to deal with relations between B.C. and the United States, as well as administrative or social policy co-ordination with other governments; in 1987 this became a branch within the office of the Premier. In economic terms, a Ministry of Industry and Small Business Development with an international economic relations branch was given responsibility for developing and implementing trade policy in cooperation with the federal government. (This Ministry has been renamed International Business and Immigration.)

Quebec established a Department of Intergovernmental Affairs in 1967. The emphasis of the Department's international approach was as much on cultural and political relations as on economic relations, with priority given to the French-speaking international community and to the United States. Quebec's case was complicated by the fact that its separatist government (1976-1985) had as one of its political goals the opening of direct relations with the rest of the world. In December 1982, a Department of External Trade was established. In March 1984, the Department of Intergovernmental Affairs was divided in two, along internal-external lines. International Relations became a new department under the Minister of External Trade, who also became Minister of International Relations. Although less aggressive in its public statements, the Liberal government in power since December 1985 is also actively promoting the development of Quebec's international relations. In an attempt to rationalize human and financial resources, a Department of International Affairs was established in December 1988. The staff of the former



Department of International Relations and most of the staff of the Department of External Trade were brought under the authority of the Minister of International Affairs. The new department was given the mandate to plan, organize and direct the foreign activities of the government and of its departments and agencies, to coordinate their activities in Quebec respecting international affairs and, in cooperation with the departments concerned, to devise and implement an international affairs policy that would favour the influence and development of Quebec, particularly on the commercial, cultural, economic, political and social planes.

In the other provinces, international matters are generally coordinated at Cabinet level or by the Secretariat of the Council of Ministers in close cooperation with the federal government. In Saskatchewan, for example, the Department of Intergovernmental Affairs established in 1979 no longer exists; coordination and planning now take place at the Executive Council level, although the Ministry of Economic Diversification and Trade assists in program delivery.

These structures help to promote formal and informal internal and external contacts and to prevent, or at least to solve, problems that may arise between levels of government and with foreign governments. However, the growth of a bureaucracy, intentional or not, adds to the number of participants and thereby delays decisions.

The provinces have gradually assumed responsibilities beyond their borders. The federal government has taken note of this and acted accordingly. In 1981, the Hon. Mark MacGuigan, then Secretary of State for External Affairs, said:

Our federal system and the realities upon which it is based (...) have weighed and continue to weigh constantly on the thrust and nature of our international policies in areas as varied as cultural, scientific, technical, and educational exchanges, cooperation in transportation, health and environmental protection, development assistance, trade promotion and industrial cooperation. (12)

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(12) "Le fédéralisme et les relations internationales du Canada", 12 *Politiques internationales*, 189-200 (1981).

The central government has responded step by step to provincial expectations with a pragmatic approach. Each case is studied separately. Solutions take account of national interests and the opportunities for compromise among often divergent provincial positions. Thus in 1967 the Department of External Affairs established a federal-provincial coordination branch. It assigned an officer posted in Washington the task of dealing with the provinces. It also allows provinces to send an official to work at a Canadian embassy in specific fields, such as education or immigration. It facilitates the opening of offices abroad that fit within the framework of the national strategy, as in the opening of Ontario House in Paris. Within Canada, meetings between federal and provincial officials make it possible for Canada to sign multilateral treaties affecting matters of provincial jurisdiction (human rights and international covenants, for example).

The provinces are also consulted on a ministerial or official level about treaties of specific interest to them. Official provincial participation in negotiations is nevertheless the exception. There are examples of unofficial negotiations at political levels before negotiations or during them (Alberta and hydrocarbons; Quebec and electricity exports; Ontario and pollution of the Great Lakes and the auto pact; British Columbia and the Columbia River agreement as well as coal exports). The central authorities try to adapt to different circumstances while keeping control over policy and final decisions.

#### SOME INTERNATIONAL PROVINCIAL ACTIVITIES

For analysis purposes, provincial activities will be summarized under three headings that reflect provincial interests and bring into play their international role or international personality.

##### A. International Treaties

Since the end of the '60s, this question has been settled at the international level by the 1969 Convention on the Law of Treaties and by practice. This international agreement codifies existing rules and allows for the possible introduction of new norms to reflect changes



in the international system and the developing new world order. There is no longer a clear distinction between international treaties and other forms of international commitments such as contracts between countries and public or private multinational corporations, or international cooperation agreements, which are often based on the good faith of the parties in question. The treaty itself no longer covers only ties between States. Today it also covers new international persons such as individuals, international organizations (the UNO and the EEC, for example) and perhaps in the future it will cover multinationals.

In this changing concept of the treaty, the question of the capacity to deal with federated states - American states, Canadian provinces, Swiss cantons and federated Soviet republics - has been the subject of international discussion. Two sessions of a diplomatic conference studied the final text of what was to become the 1969 Convention on the Law of Treaties. In 1968 the states opted for a version proposed in 1966. It reads as follows:

States which are members of a federal union may possess a capacity to conclude treaties if such capacity is admitted by the federal constitution and within the limits there laid down.

This clause was rejected at the 1969 session and did not appear in the final version. Nevertheless, the fact remains that the Constitutions of some federal states vest their constituent territorial subdivisions with a capacity to conclude treaties, although this capacity is usually limited in law or in practice.

In Canada the Constitution does not include any provision of this type. As mentioned earlier, the 1867 text does not say anything about international affairs except for section 132, which has become obsolete:

The Parliament and Government of Canada shall have all powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

Since 1867, constitutional amendment has not considered the matter. That is why today answers are to be sought in judicial

interpretation at the highest level, i.e., until 1949 from the Judicial Committee of the Privy Council and since then from the Supreme Court of Canada.

The question of which level of the Executive - federal or provincial - is responsible for international relations was not settled by the Judicial Committee. The Supreme Court of Canada ruled in favour of the federal government in 1967 (*Re Offshore Mineral Rights of British Columbia*), 1981 (Resolution on *Patriation of the Constitution*) and 1984 (*Newfoundland Continental Shelf*). Only the federal government has external sovereignty. There is thus no division of powers. It should be recalled that Canada today is bound by over 1,000 international treaties, three-quarters of which are bilateral.

Part of the doctrine maintains that the Crown within Canada has two aspects: the federal Crown and the provincial Crown. Is it possible to imagine, in view of all the problems that such an undertaking would give rise to, that the provincial Crown could be projected into the international arena in connection with international treaties? In the mid-60s, Quebec claimed such a right for agreements bearing on areas of provincial jurisdiction. It concluded ententes with France on cultural, educational and cooperational matters. Umbrella agreements or *ad hoc* agreements concluded by the federal Executive, sometimes the same day, authorized the provincial ententes. The federal government was in fact opposed to direct official contact between provinces and foreign countries, and stated that the provinces did not have the capacity to conclude treaties, one of the attributes of international sovereignty.

Since then, Quebec and the other provinces that have become involved in international matters (Ontario, Alberta, British Columbia and, more recently, Saskatchewan) have signed many agreements, arrangements and ententes with governments and other foreign entities. The *de facto* situation gave rise to the debate.

Let us recall a fact. Movement of people and capital, trade, financial, technological, tourism and cultural exchanges, and



written and oral consultation as well as arrangements and agreements, involve individuals, private groups and public bodies all along the Canada-U.S. border.<sup>(13)</sup> But such contacts are not limited to the North American continent, including Mexico. They also include European, Asian, Latin American and African countries as well as their territorial subdivisions.<sup>(14)</sup> They cover administrative, economic, financial, technical, social and legal matters such as the construction and maintenance of bridges, highway regulations, forest fire protection, agriculture, economic development, science and technology, social security, health, alimony, succession rights, and education. Most of the time, the federal authorities are not informed of such contacts and interactions.

In recent years, however, some provinces (Alberta and British Columbia, for example) have provided the Department of External Affairs with a list of their agreements. The federal government may choose to adopt legislation, or enter into an umbrella agreement, authorizing the provinces to conclude agreements with foreign entities. The legal status of agreements concluded in this manner by the provinces is not clear. Are they international agreements? If so, is the province acting on behalf of the federation or solely on its own behalf? Canadian literature is divided. A recent decision of the Quebec Court of Appeal states that a formal judicial agreement between Quebec and France is simply an administrative arrangement between two recognized jurisdictions and is not a legal agreement under international law.<sup>(15)</sup>

It is therefore important to distinguish between the many transnational or unofficial relations of Canada's provinces, most of which involve various U.S. constituent states, and international, or official, relations with foreign governments or their political subdivisions. The former, geographically imposed, present no problems because they are not international treaties. The latter type of relations are a source of

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(13) R.F. Swanson, *The U.S.-Canada Relationship at the State-Provincial Level*, 1976.

(14) A. Jacomy-Millette, *Rapport canadien*, in a special issue of the *Revue belge de droit international*, 1984.

(15) *Bazylo v. Collins*, 4 April 1984.

conflict between the Canadian federation and its own political subdivisions.

Problems can also arise over the implementation of international obligations. Once a treaty has been concluded, it has to be applied domestically where required. In Canada, with its British traditions, while customary international law is part of the law of the land, international treaties do not have the force of law within the country. Treaties that amend the law of the land or call for the passing of legislation for their implementation must follow the existing constitutional division of legislative jurisdictions.<sup>(16)</sup> Each province is to a degree "sovereign" within its own sphere of legislative jurisdiction with the exception of federal paramountcy in concurrent fields and the residuary power conferred on the federation.

The picture drawn by the Judicial Committee of the Privy Council at the end of the '30s<sup>(17)</sup> of the legislation of the federation and the provinces as watertight compartments appeared to be adequate. Nevertheless, it left in the dark some new areas and possible solutions. Furthermore, the picture appears to be changing in the interpretation given to it by the Supreme Court of Canada, which now recognizes only one international personality, the federation, in the international sphere, and only one level responsible for Canada's international obligations, the federal. Does this mean that the Canadian Parliament could tomorrow enact statutes covering an area of provincial jurisdiction, not only in the absence of provincial positions, but against the wishes of the provinces, for the domestic application of treaties? No definitive answer has yet been given, although in *obiter* the Supreme Court of Canada appears to be moving in that direction in two recent instances (*Macdonald v. Vapor*, and *Schneider*).<sup>(18)</sup>

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(16) Jacomy-Millette, *Treaty Law*, 1975.

(17) *Re Labour Conventions*.

(18) Bora Laskin J. and B. Dickson J. (1977) S.C.R. 134, p. 167; (1983) 139 D.L.R., 3d, 417, p. 437.



## B. International Representation

The Canadian Constitution is silent on the issue of international representation. Canada has approximately 125 missions abroad and diplomatic relations with 158 countries. It also sends representatives to international intergovernmental organizations operating at the world (the UNO and its specialist agencies) or regional (e.g., NATO, OECD) level. Links between provinces and foreign countries may be contracted or structured by an exchange of visits at the highest level and by the opening of provincial offices in countries of special, usually economic, interest. This is the international ad hoc or permanent international representation that corresponds to inter-State diplomatic relations.

Like the Prime Minister of Canada, provincial Premiers, especially those in the central and western provinces, and their cabinet ministers make official visits abroad or to our powerful neighbour to the south. Conversely, many Heads of State, and government leaders from North and South, as well as their diplomatic representatives and Cabinet ministers, make official or private visits to provincial capitals. They initiate negotiations and sometimes conclude ententes of various types. Some premiers always attend the annual Conference of New England Governors and Eastern Canadian Premiers. Their Western counterparts take part in the Western Governors Conference. Some meet with members of foreign governments at bilateral joint commission or sub-commission meetings. Quebec and Ontario attend the annual meeting of the eight American states bordering the Great Lakes. In 1983 the Great Lakes St-Lawrence Maritime Forum, which includes provinces, states and federal and private marine industry organizations, was established as a promotional agency.

Contacts are becoming increasingly institutionalized by the establishment of provincial representation offices abroad; their number varies from year to year depending on available funds and current priorities and interests. At the very beginning, provincial officials set up offices abroad to promote immigration and trade. These offices were closed around the turn of the century. It was only in the '60s that the idea took hold again. Quebec opened its first office during the early stages of the Quiet Revolution, an irreversible movement of cultural

affirmation and educational co-operation. The movement gradually grew to include the development of infrastructures and economic relations, with trade representing a growing share of provincial activities. Although Quebec continues to dominate in 1990 in terms of the scope of its international initiatives and its participation in a wide range of international organizations, Ontario and British Columbia have nevertheless made great strides in recent years in promoting the resources of their respective provinces abroad.

Ontario has moved to close missions considered unprofitable, preferring to give priority consideration to the negotiation of trade agreements by its more important missions, such as those in London, Paris and Frankfurt. For example, its Paris office, under the capable direction of former CBC personality Adrienne Clarkson, managed to negotiate several sizeable business deals, including the construction of a Renault-AMC plant in Brampton, an undertaking which represented an investment of \$600 million and the creation of about 3,000 jobs.<sup>(19)</sup>

As of July 1990, the provinces had 61 independent offices in other countries, in addition to 11 offices attached to Canadian missions.<sup>(20)</sup> For example, Quebec had 29 (22 plus 7) and Ontario had 16 (15 plus 1) (see Appendix for details of all locations).

Furthermore, while the majority of Quebec's provincial missions are located in the U.S. and Western Europe, substantial inroads have been made in recent years in Latin America and Asia where Montreal engineering firms have been putting to good use their increasingly renowned expertise. Quebec thus stands out from the rest of the field by the sheer scope of its activities abroad. The provincial department of International Affairs has about 900 employees, over a third of whom are posted in offices abroad.<sup>(21)</sup>

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(19) Carole Landry "Délégation générale de l'Ontario à Paris: Nous sommes ici pour le business", Interview with Adrienne Clarkson, Le Droit, November 30, 1985.

(20) According to the Office of the Senior Adviser for Federal-Provincial Relations, External Affairs and International Trade Canada.

(21) Annual Report 1988-1989, p. 61.



Clearly, the Quebec Department of International Affairs has given priority to its relations with francophone States, and with France in particular, but without neglecting the fact that the United States accounts for 75% of its international exports. Quebec is also working to develop its relations with various multilateral institutions such as the UN, UNESCO, the OECD and the ILO.

The role of these provincial missions varies with the objectives of the province (general, political, cultural, economic), the interest of the host country and political events. Thus the Quebec delegate in Paris at the time of de Gaulle and the Alberta and Quebec delegates in London when the Constitution was being patriated played a political role. The common and priority objective, however, accentuated by world crises, relates to trade, the economy and finance. It is the richest and most highly industrialized provinces that have felt and will continue to feel and express the need to expand their relations with other countries, but with some differences. Quebec wants to be a true international actor on the world stage but its doing so depends on two other players: Canada and the other country in question. Ontario, on the other hand, does not want to have a world role and generally works together with the central power. British Columbia, Alberta and Saskatchewan, geographically distant from the central power, take various stands depending on the issue in question. They make use of central government mechanisms, but also intervene separately and openly in world affairs (in natural resource and energy matters, for example). The less industrialized provinces rely on Ottawa to help them strengthen their trade ties abroad. There are differences of aim and option, with the dividing line based on real or potential economic wealth and on real or desired political weight.

The role of provincial officials, like Canadian diplomats, is to represent their government, facilitate contacts between natives of both countries, observe and inform, participate, and even to initiate the discussions and negotiations needed to consolidate the province's and the federation's transnational and official ties. They therefore work for both levels of government. There are then provincial foreign policies that

generally support the federation's overall policies, notably in economic matters. There are also domestic quarrels and conflicts that go outside the country; this comment also applies to international organizations. Free trade talks between Canada and the U.S. helped highlight the great dissatisfaction of the provinces, in particular Quebec and Ontario, at being excluded from these negotiations which would undoubtedly affect their respective economies. Issues which have been temporarily put on the back burner, such as cleaning up waterways and controlling acid rain, should also not be ignored. The provinces' participation in international organizations also leads at times to more serious squabbles. However, such conflicts should not take precedence over a network of activities more fundamental to the socio-economic development of the provinces.

### C. Participation in International Organizations

Representation is a not negligible tool of the provinces' public foreign policies. Participation in international worldwide (UNO), regional (OECD) or sui generis (francophone or Commonwealth) international organizations has today become of greater importance, and in some instances, a priority matter. It involves not only political considerations, but also national and international legislation.

Since the '60s, Quebec has taken a special position. It feels that this sort of participation provides a window on the world at various levels: political, economic, technological, sociocultural. It wants to play a key and "fundamental" role in francophone intergovernmental institutions like the Agency for Cultural and Technical Cooperation (ACCT), the Conference of the Ministers of Education (CONFEMEN), Conference of Ministers of Youth and Sports (CONFESJES), as well as in the NGOs like the International Association of French-speaking Parliamentarians created in 1967 and transformed into the International Assembly of French-speaking Parliamentarians (AIPLF) in 1989 and the Association of Partly or Wholly French-language Universities (AUPELF). The francophone world is not the only area of special interest to Quebec governments. From the mid-'60s Quebec has steadily increased its contacts with UNESCO, the ILO, the FAO, the WHO, the ITU, the ICAO, and GATT, bodies concerned with cultural,



social, technical and economic matters. Under the Parti Québécois, there was also an emphasis on politics. The importance of Quebec participation lies, according to former Intergovernmental Affairs Minister Jacques-Yvan Morin (*Le Devoir*, 31 March 1984), in the "immense opportunities for cooperation and assistance it affords in terms of development strategies and activities as well as expertise". Moreover, in 1981, while Deputy Premier and Minister of Cultural and Scientific Development, Mr. Morin pointed out that Quebec's international activities were the "lifeblood of Quebec society".<sup>(22)</sup> And like Mr. Morin, private groups, different categories of associations and the academic community appear to support the idea of developing relations with various foreign states. As Mr. Morin remarked in 1981, "The people are the first ones to realize where Quebec's international interests lie. The Government of Quebec has no other choice but to reflect these interests and promote them to the benefit of each Quebecker".<sup>(23)</sup>

This view of Quebec's role brings it into conflict with the federal government, as evidenced by the debate surrounding the province's participation in ACCT or in projects of la Francophonie. Quebec joins with other provinces in demanding the right to take part in international economic discussions on matters of provincial jurisdiction.

For the other provinces, the economic aspect is the key one. From the early '80s on, it became impossible to imagine provincial or national economies in isolation, especially for a country like Canada, whose prosperity is so heavily dependent on exports. It is in fact within the context of international meetings like those of GATT (General Agreement on Tariffs and Trade) that economic agreements (e.g. customs duties and

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(22) Jacques-Yvan Morin, "Allocution d'ouverture, XIII<sup>e</sup> Congrès des relations internationales du Québec (October 8 and 9, 1981), in *Collection choix* (Le Canada dans le Monde), C.Q.R.I., Spring 1982, p. 11.

(23) *Ibid.*, p. 12. The spring 1982 edition of *Collection choix* gives an analysis of the foreign policy directions of Canada's provinces and contains four relevant articles: Quebec (Claude Roquet), the Atlantic provinces (Raymond Daigre), Ontario (Denis Massicotte) and the Western provinces (Wayne Clifford).

non-tariff measures) providing economic development opportunities for Canada and the provinces are discussed and negotiated. That is why some provinces have claimed the right to take part in such international negotiations (for example Quebec since the '70s and Alberta since 1982 in connection with GATT). Two kinds of participation in international organizations are envisaged: the formulation of a "national" policy for Canada vis-à-vis these international conferences, and actual participation in them. A few examples are worth noting. For UNESCO and OECD conferences on education, there is federal-provincial consultation before the conferences take place. Canada's final position is determined by the federal government. There is also consultation with provinces involved in francophone meetings (ACCT, CONFEMEN, CONFEJES). In areas like health (WHO) and agriculture (FAO) there is consultation among officials with the participation of External Affairs' federal-provincial coordination branch. GATT meetings are preceded by consultation with the provinces and the private sector. It is nevertheless the federation that has the decision-making power.

Participation raises major problems both nationally and internationally. The founding charters of international organizations should provide for the membership of entities that are not sovereign countries, which is not generally the case at the moment. Assuming that the charter of such an organization would allow for the membership of a federal entity, the federal constitution of the country must also provide for it. If either of these two conditions is not met, the participation of federal entities, i.e. the provinces, must be within a national delegation, and is subject to negotiations within Canada between the two levels of government.

Two examples may be cited to give a concrete illustration of these comments. At the Agency for Cultural and Technical Cooperation (ACCT), Quebec (since 1971) and New Brunswick (since 1977) have had the status of "participating government", obtained following domestic and international negotiations. Both provinces are therefore able to take part in the institutions, programs and activities of the francophone organization. Participating government status allows Quebec and New



Brunswick to be specifically identified in the Canadian delegation and to have a seat and an identification plaque at the Conference table (in other words, the right to speak). They also communicate directly with the Agency on questions of program structure. These two governments pay a separate contribution to the Agency, equivalent to a fraction of Canada's. Information and consultation arrangements have been established between Quebec, New Brunswick and the federal government, in order to allow active participation for each of them while ensuring unity of action within the community of Agency members.

Quebec's and New Brunswick's participatory role in international affairs has also been reinforced by the presence of their Premiers at the first three Conferences of Heads of State and Government of Countries Having the Use of the French Language in Common (also called Francophone Summits), which were held in Paris (February 1986), Quebec (September 1987) and Dakar (May 1989). In fact, it was the signing, on 7 November 1985, of an Understanding between the Government of Canada and the Government of Quebec concerning the Francophone Summit which allowed the first Summit to take place. (Since 1978, successive governments had indicated that France would not participate in a Summit if Quebec was not satisfied with the representation role offered to it within the Canadian delegation.) The Understanding of 7 November 1985 provided that the Premier of Quebec would sit beside the Prime Minister of Canada at the conference table throughout the Summit, Quebec being identified by the designation "Canada-Québec" and the flag of Quebec. During the first part of the Summit, which would deal with the world political and economic situation, the Premier would act as an "interested observer, although on questions regarding the world economic situation he would be able, following consultation and with the agreement of the Prime Minister of Canada, on a case-by-case basis to intervene on matters of concern to Quebec". During the second part of the Summit, on cooperation and development, the government of Quebec would participate fully in the debates and proceedings in accordance with the procedures and practices followed at the ACCT. On 6 December 1985, an identical Understanding was signed with the government of New Brunswick. Moreover, the representatives

of the governments of Canada and Quebec signed a Protocol on the Organization of the Quebec Summit in Paris, on 19 February 1986. Both governments acted as host governments to the Quebec Summit held on 2, 3 and 4 September 1987. The Prime Minister of Canada, as representative of the host country, acted as the general chairman of the Summit. He also chaired the proceedings of the first part, dealing with the world political and economic situation, while the Premier of Quebec chaired the second part, on cooperation and development.

External provincial activities are also facilitated by contacts made within a number of non-government organizations (NGOs), where the provinces sometimes occupy separate sections. An interesting example is the International Assembly of French-speaking Parliamentarians, which is the interparliamentary organization of la Francophonie. Quebec, New Brunswick, Ontario, Manitoba and Nova Scotia are autonomous sections with the same standing as Canada. The Association of Partly or Wholly French-language Universities (AUPELF) is also an international channel used by some provinces. The same is true of a Commonwealth institution like the Commonwealth Parliamentary Association (to which all provinces belong). There are also growing ties with professional associations of jurists, doctors, architects, etc.

## CONCLUSION

The federal-provincial collaboration described is evolving in a framework of national and international variables. It attempts to neutralize and overcome differences and conflicts that have arisen over the past two decades. We should not limit ourselves, however, to a negative analysis of the tension between the federal government and the provinces, since this tension sometimes makes it possible to reassess the matters at stake in the negotiations, as evidenced by the recent free trade talks, between Canada and the U.S. These discussions bring to light the viewpoints and concerns of all regions in Canada, thereby providing a clearer understanding of the need to adopt new initiatives and of inherent limitations.



Furthermore, the expansion of the provinces' foreign policy activities should not be viewed as a threat to the activities of the federal government. Indeed, they should be viewed as complementary. The federal government must maintain its authority over such intrinsic responsibilities as defence matters, the signing of treaties and so forth. However, socio-economic development can no longer remain the sole prerogative of the federal bureaucracy. Harmonization and conciliation efforts will clearly be required to prevent overlapping of projects and services which ultimately paralyze the economy and infuriate taxpayers. The task ahead is not an impossible one, and in this regard the results of several federal-provincial conferences have been encouraging. The management of Canada's foreign policy in the future will therefore have to provide for joint central and provincial mechanisms organized along lines yet to be determined.

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## APPENDIX

### PROVINCIAL OFFICES ABROAD

#### British Columbia (9 + 1)

Munich	Seattle (4)
Hong Kong	Tokyo
London	Singapore
Los Angeles	Irvine (4)
San Francisco (4)	Seoul (Canadian Embassy)*

#### Alberta (6)(six)

Hong Kong	New York City
	Tokyo
London	Seoul
Los Angeles	

#### Manitoba (2)

Hong Kong	Rotterdam (1)
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#### Saskatchewan (3 + 1)

London	Minneapolis (Canadian Consulate General)*
New York City	
Hong Kong	

#### Nova Scotia (3)

London	Portland (4)
Essen	

#### New Brunswick (1 + 1)

Hamburg (1)	Boston (Canadian Consulate General)*
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#### Ontario (15 + 1)

Atlanta	London
Boston	Los Angeles
Chicago	New York City
Dallas	Paris
Frankfurt	Singapore
Hong Kong	Tokyo
Nanjing	Stuttgart
New Delhi	Seoul (Canadian Embassy)*

Quebec (22 + 7)

Atlanta	Los Angeles
Bogota	Mexico
Boston	Milan
Brussels	New York City
Buenos Aires	Paris
Caracas	Port-au-Prince
Chicago	Rome
Dusseldorf	Singapore
Hong Kong	Stockholm
Lafayette	Tokyo
London	Washington (Tourism) (3)

Abidjan (Canadian Embassy) (2)

Immigration co-location with Canadian Mission:\*\*

Damascus	Bangkok
Lisbon	Buenos Aires
Rome	Cyprus

TOTALS: 61 independent  
11 attached to Canadian Missions

- (1) Under contract.
  - (2) Not a provincial office; provincial officer seconded to the Embassy as Counsellor (Education).
  - (3) Tourism office; sporadic visits of provincial officer posted in New York.
  - (4) Tourism Office.
- \* Within the premises of a Canadian Mission under a specific agreement.
- \*\* Quebec Immigration Officers within the premises of a Canadian Mission under the Cullen-Couture agreement.

Source: Office of the Senior Adviser for Federal-Provincial Relations, External Affairs and International Trade Canada.











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